

REMARKS/ARGUMENTS

Applicants have reviewed and considered the Non-Final Office Action mailed on January 23, 2008, and the references cited therewith. Claims 3-8, 13, 16-23, 25, 27-31, 33-36, and 40-44 are pending in the present application. Claims 13, 16-21, and 28-30 have been previously withdrawn. Claims 32 and 37-39 are cancelled. Claims 3, 4, 6-8, 22, 23, 25, 27, 31, 35, 36, and 40 are amended. Claims 41-44 are new. Support for the claim amendments and new claims can be found in the claims as originally filed and in the Applicants' patent application on page 4, lines 9-11; page 4, line 22 - page 5, line 5; page 7, lines 20-21; page 8, lines 9-28; page 13, lines 1-7; page 13, line 21 - page 14, line 21; page 19, line 21 - page 20, line 2; and page 20, lines 7-10, as well as Figures 1, 2, 2A, 3, 4, 5, 6, and 6A. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

Interview Summary

Applicants thank the Examiner for the interview held on March 27, 2008 between the Applicants' representatives and the Examiner. The rejection of claim 8 under 35 U.S.C. § 103 was discussed. No agreement was reached.

Request that the Application Be Considered Special

This application, filed on October 16, 1997, has been pending for more than ten years. Regarding applications pending more than five years or applications under a third or further action, the MPEP provides as follows:

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is

up for the third or subsequent *>Office< action with a view to finally concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort >should be< made to terminate its prosecution. In order to accomplish this result, the application is to be considered "special" by the examiner. (MPEP 707.02).

Because this application has been pending for more than five years, Applicants request that this application be considered special by the Examiner. Applicants also request that the Supervisory Patent Examiner carefully study this application and personally consider any future rejections made in this case, as stated by MPEP 707.02. Applicants further request that the Supervisory Examiner make every effort to terminate prosecution by either issuing valid rejections or by allowing the claims.

Information Disclosure Statement

The Examiner states that the foreign references and non-patent literature documents included in the Information Disclosure Statement submitted on November 2, 2007 were not considered. In particular, the Examiner asserts that the Applicants did not comply with the requirement of 37 C.F.R. 1.98 regarding providing a legible copy of each foreign reference and non-patent literature document. Appropriate legible copies of the foreign references and non-patent literature documents are included in this response.

Claim Rejections – 35 U.S.C. § 103

The Examiner rejects claims 3-8, 22, 23, 25, 27, and 31-40 under 35 U.S.C. § 103 as obvious over U.S. Patent 4,710,165 (hereinafter "McNeil") in view of U.S. Patent 4,743,232 (hereinafter "Kruger") and further in view of U.S. Patent 5,028,355 (hereinafter "Cope"). Claims 3, 32, and 37-39 are cancelled, rendering the rejection against these claims moot. This rejection

is respectfully traversed with respect to the remaining claims. With regard to claim 8, the Examiner states that:

With respect to claim 8: McNeil teaches a canister 22 for collecting fluids drawn through standard connecting tubes from a drainage site on a human, such as a wound via patient port 32 of collection canister 22. The canister 22 is fluidly connected with a second end of the standard connecting tube, which is opposite the first end of said tube located at the drainage site, via said port 32. Suction pump 10 applies negative pressure to said canister, and thus also said tube, said suction pump 10 being fluidly connected to said canister 22 via line 26. At least one bacterial filter 24 is positioned in line 26 between said canister 22 and said pump 10. A sensor in the form of a "full level" sensor detects when said canister 22 is substantially full with fluid, said sensor being associated with said suction pump 10 via a logic circuit having an AND gate 124 that controls power to pump motor 80 to discontinue application of the negative pressure when a substantially full condition of said canister is detected. ('165, Col. 5, lines 1-31, 36-40, Col. 7, lines 52-57, Col. 8, lines 10-13)

McNeil does not teach an elastomeric dressing. Kruger teaches an elastomeric dressing 10 comprising a polyether polyamide elastomer material and a tube 20 in fluid communication with the elastomeric film dressing 10. The dressing 10 has a pressure sensitive acrylic adhesive 14 in at least the peripheral areas and is inherently and necessarily capable of securing a porous pad thereunder to the tissue within a sealed space defined by the inner surface of the film dressing 10. Thus, the tube 20, which extends under the wound-facing surface of dressing 10, has a first end that would be in fluid communication with said porous pad via the dressing 10. ('232, Col. 3, lines 32-45, Col. 3, lines 53 - Col. 4, lines 7, Col. 4, lines 16-25)

Neither McNeil nor Kruger teaches a porous pad which is permeable to fluids. Cope teaches that polyether foams and the methods of forming them are known in the art. These foams are permeable to fluids and thus capable of use as a porous pad for wound fluid absorption. Therefore it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of McNeil and Kruger so as to include a porous pad that is permeable to fluids to aid in absorption of wound exudates at the wound site. The combined teaching of McNeil and Kruger and Cope meets all of the limitations of claim 8 and thus is a therapeutic

combination for promoting tissue healing. ('355, Col. 4, lines 65-68) (Office Action dated January 23, 2008, pages 3-4).

No *prima facie* obviousness rejection may be stated against claim 8 because McNeil, Kruger, and Cope, alone or in combination, fail to teach or suggest all of the features of claim 8. In addition, Kruger may not be combined with McNeil and Cope to correct the deficiencies of McNeil and Cope in an obviousness rejection against claim 8 because the Examiner fails to state any reason to combine the references under *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (U.S. Apr. 30, 2007). In addition, the proposed combination renders Cope unsatisfactory for Cope's intended purpose. Also, Cope is non-analogous art.

I. McNeil, Kruger, and Cope fail to teach or suggest all of the features of claim 8

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (U.S. Apr. 30, 2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)). Additionally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Neither McNeil, Kruger, nor Cope teach or suggest all of the features of claim 8. Specifically, neither McNeil, Kruger, nor Cope teach or suggest at least (1) "a tube having a first end in fluid communication with said porous pad," and (2) "a porous pad," as defined in claim 8.

A. *McNeil, Kruger, and Cope fail to teach or suggest the feature of a tube having a first end in fluid communication with said porous pad*

McNeil, Kruger, and Cope fail to teach or suggest the feature of a tube having a first end in fluid communication with said porous pad. Nonetheless, the Examiner cites elements of Figure 1 of McNeil, reproduced above, with respect to this claimed feature. A relevant portion of McNeil describing Figure 1 is reproduced below:

A "patient" port 32, formed in cover 30 and adapted to be connected to the patient, includes a conventional anti-reflux valve (not shown) for preventing the contents of the cannister 22 from refluxing into the patient line or connection when the cannister is tipped. (McNeil, column 5, lines 36-40).

Neither the cited portions nor any other portion of McNeil teach or suggest the feature of a tube having a first end in fluid communication with said porous pad. The cited portion discloses only a "patient" port 32 in cover 30 that is adapted to be connected to a patient.

On the other hand, claim 8 recites the feature of a tube having a first end in fluid communication with said porous pad. The cited portions differ from the claimed feature because the cited portions nowhere teach or suggest that "patient" port 32, or any protrusion therefrom, has an end in fluid communication with a porous pad, as claimed, and instead discloses only connecting the "patient" port 32 to a patient. Because McNeil fails to teach or suggest a tube that has "a first end in fluid communication with said porous pad," McNeil fails to teach or suggest a tube as defined in claim 8.

Kruger and Cope fail to cure McNeil's lack of disclosure. Kruger and Cope fail to teach or suggest a tube in fluid communication with a porous pad, as claimed, and the Examiner fails to assert otherwise. For example, even assuming, *arguendo*, that Cope teaches or suggests a "porous foam," an assertion that the Applicants' strongly reject, Cope still fails to teach or suggest a tube in fluid communication with such porous foam. Thus, McNeil, Kruger, and Cope, alone or in combination, fail to teach or suggest

all of the features of claim 8. Therefore, no *prima facie* obviousness rejection may be stated against claim 8.

B. *McNeil, Kruger, and Cope fail to teach or suggest the feature of a porous pad*

McNeil, Kruger, and Cope fails to teach or suggest the feature of a porous pad as defined in claim 8. Nonetheless, the Examiner cites the following portion of Cope with respect to this claimed feature:

According to the present invention a polyether or polyester urethane foam is formed from isocyanate and hydroxyl containing (polyol) reactants by known means, but with the charge transfer agent incorporated into the reaction mixture prior to foam formation. (Cope, column 4, line 65 - column 5, line 1).

Neither the cited portion nor any other portion of Cope teaches or suggests the feature of porous foam, as defined in claim 8. Cope discloses an electrically conductive polyurethane foam product that is prepared by the in situ combination of polyurethane-forming reactants and an effective amount of a charge transfer agent. Cope discloses using the disclosed foam product as an anti-static material, such as filler in aircraft fuel tanks. See, Cope, column 3, lines 36-40; column 4, lines 33-37; and column 26, line 67 - column 27, line 14. Cope nowhere discloses securing the foam material to tissue, and nowhere discloses that the foam material is in fluid communication with a tube.

On the other hand, claim 8 defines the feature of a porous foam in various other features of claim 8. As a first matter, claim 8 defines the feature of a "porous pad" in the feature of "an elastomeric film dressing having a pressure-sensitive adhesive in peripheral areas for securing said porous pad to tissue within a sealed space." The cited portion differs from the claimed feature because the cited portion nowhere teaches or suggests securing the disclosed foam material to tissue, let alone securing the disclosed foam material to tissue within a sealed space using an elastomeric

film dressing having a pressure-sensitive adhesive in peripheral areas. Because the cited portion fails to teach or suggest a porous pad as defined in this claimed feature, the cited portion fails to teach or suggest a “porous pad,” as claimed.

As a second matter, claim 8 defines the feature of a “porous pad” in the feature of “a tube having a first end in fluid communication with said porous pad.” The cited portion differs from the claimed feature because the cited portion fails to teach or suggest that the disclosed foam material is in fluid communication with a tube. Because the cited portion fails to teach or suggest a porous pad as defined in this claimed feature, the cited portion fails to teach or suggest a “porous pad,” as claimed.

McNeil and Kruger fail to cure Cope’s lack of disclosure. The Examiner admits that “[n]either McNeil nor Kruger teaches a porous pad which is permeable to fluids.” (Office Action dated January 23, 2008, page 4). McNeil and Kruger also fail to suggest this claimed feature, and the Examiner does not assert otherwise. Thus, McNeil, Kruger, and Cope, alone or in combination, fail to teach or suggest all of the features of claim 8. Therefore, no *prima facie* obviousness rejection may be stated against claim 8.

II. The Examiner fails to state a sufficient reason to combine the references

No *prima facie* obviousness rejection may be stated against claim 8 because the Examiner fails to state a sufficient reason to combine the references. The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The scope and content of the prior art are... determined; differences between the prior art and the claims at issue are... ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined.

Graham v. John Deere Co., 383 U.S. 1 (1966). Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (U.S. Apr. 30, 2007).

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

In the case at hand, no *prima facie* obviousness rejection can be stated because the Examiner failed to state a sufficient reason to combine Kruger with McNeil and Cope in light of the differences between the cited references and claim 8. Specifically, as shown above, neither McNeil, Kruger, nor Cope teach or suggest (1) the feature of “a tube having a first end in fluid communication with said porous pad,” and (2) the feature of “a porous pad,” as defined in claim 8. Because neither McNeil, Kruger, nor Cope teach or suggest at least these claimed features, major differences exist between the cited references and claim 8 under the *Graham v. John Deere Co.* inquiry set forth above.

Furthermore, the Examiner failed to state a sufficient reason to combine Kruger with McNeil and Cope because the Examiner gives no reason for combining Kruger with McNeil and Cope that provides a rational underpinning to support a legal conclusion of obviousness. Regarding the combination of Kruger with McNeil and Cope, the Examiner states that:

McNeil does not teach an elastomeric dressing. Kruger teaches an elastomeric dressing 10 comprising a polyether polyamide elastomer material and a tube 20 in fluid communication with the elastomeric film dressing 10. The dressing 10 has a pressure sensitive acrylic adhesive 14 in at least the peripheral areas and is inherently and necessarily capable of securing a porous pad thereunder to the tissue

within a sealed space defined by the inner surface of the film dressing 10. Thus, the tube 20, which extends under the wound-facing surface of dressing 10, has a first end that would be in fluid communication with said porous pad via the dressing 10. ('232, Col. 3, lines 32-45, Col. 3, lines 53 - Col. 4, lines 7, Col. 4, lines 16-25) (Office Action dated January 23, 2008, page 4).

In the cited portion of the Office Action, the Examiner attempts to combine Kruger with McNeil. However, the Examiner fails to give any reason to combine Kruger with McNeil. The Examiner gives no such reason elsewhere in the Office Action. Thus, no sufficient basis is provided for combining Kruger with McNeil in the manner proposed by the Examiner, especially in light of the major differences that exist between the cited references and claim 8. Accordingly, no *prima facie* obviousness rejection may be stated against claim 8.

III. The proposed combination renders Cope unsatisfactory for Cope's intended purpose

The Examiner has failed to state a *prima facie* obviousness rejection because the proposed combination renders Cope unsatisfactory for Cope's intended purpose. "If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

An intended purpose of Cope is to provide an electrically conductive foam for use in various applications that require electrical conductivity. For example, Cope provides that:

It is an object of the invention to provide an electrically conductive polyurethane foam that is suitable for use as a filler material in fuel containers or tanks, particularly in vehicles having combustion powered engines.

It is another object of the invention to provide a method for the in situ preparation of an electrically conductive polyurethane foam.

It is yet another object of the invention to provide a stable, reliable and long-lasting electrically conductive reticulated polyurethane foam structure that retains its conductivity characteristics despite repeated mechanical abrasion and exposure to heat, organic, and aqueous fluids.

....

Accordingly, the foam products of the invention are particularly well suited for use as an antistatic material, for example as a filler in aircraft fuel tanks or as a packaging material for delicate electronic components. (Cope, column 3, lines 37-49 and column 4, lines 33-37).

Cope attempts to achieve this intended purpose by including particular substances in the foam, such as an effective amount of a charge transfer agent selected from the group consisting of tetracyanoethylene (TCNE), picric acid, and analogs thereof. Including any material in the foam that detracts from this intended purpose, such as by including wound fluids in the foam, would defeat the entire purpose of Cope. For example, Cope states that "[g]enerally, the lower the water content of a foam material the lower the electrical resistance of the foam." (Cope, column 17, lines 10-11 and 28).

The Examiner's proposed combination renders Cope unsatisfactory for Cope's intended purpose because using Cope's foam in McNeil's suction and collection device would subject Cope's foam to numerous wounds fluid that may include water, thereby increasing the electrical resistance of the foam and defeating Cope's intended purpose of providing an electrically conductive foam for various specialized applications. Therefore, no *prima facie* obviousness rejection has been made against claim 8.

IV. Cope is Non-Analogous Art

The Examiner has failed to state a *prima facie* obviousness rejection because Cope is non-analogous art. In order to rely on Cope as a basis for rejection, Cope must be either in the Applicant's field of endeavor or, if not, then reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443, 1445

(Fed. Cir. 1992); *In re Deminski*, 796 F.2d 436, 442, 230 U.S.P.Q. 313, 315 (Fed. Cir. 1986).

In the case at hand, Cope is not in the same field of endeavor of claim 8 and Cope is not reasonably pertinent to the particular problem with which Applicants were concerned. With regard to the first part of the test for analogous art, Cope is not in the same field of endeavor of claim 8 because Cope is in the field of electrically conductive foam material in anti-static applications. For example, Cope provides as follows:

The electrically conductive foam materials of the present invention may be employed in a variety of military, industrial and consumer applications. When shaped in the appropriate configuration and sized to the proper dimension charge transfer agent containing polyurethane foam products can be used for example as packaging material for voltage sensitive computer parts to protect them against static electric discharges (e.g. Large Scale Integrated Circuits), in medical applications (e.g. as grounding mats for operating room equipment) or as an antistatic carpet underlayer. A particularly preferred application for the three-dimensional reticulated charge transfer agent containing foam materials of the present invention is as a filler material in vehicular fuel tanks and especially those installed in military aircraft or racing cars. (Cope, column 26, line 67 - column 27, line 15, emphasis added).

In contrast, claim 8 is in the field of healing wounds, including therapeutic combinations for promoting tissue healing. The two fields are wholly distinct from each other because anti-static, electrically conductive foam applications have utterly nothing to do with therapeutic combinations for promoting tissue healing. Thus, Cope fails the first test of *In re Oetiker*.

With regard to the second part of the test for analogous art, Cope is not reasonably pertinent to the particular problem with which Applicants were concerned. As established above, Cope is in the field of anti-static, electrically conductive foam. Specifically, Cope is directed to the problem of providing electrically conductive foam material in anti-static applications.

In contrast, claim 8 is directed to the problem of promoting tissue healing. The problem addressed by Cope is wholly distinct from the

problem addressed by claim 8. For this reason, Cope is not reasonably pertinent to the particular problem with which Applicants were concerned. Therefore, Cope fails the second part of the *In re Oetiker* test for analogous art.

As established above, Cope fails both tests for analogous art set forth by *In re Oetiker*. Therefore, Cope is non-analogous art. For this reason, the Examiner can not use Cope when fashioning an obviousness rejection against claim 8. Accordingly, the Examiner has failed to state a *prima facie* obviousness rejection against claim 8.

V. Conclusion

Because claim 8 is representative of amended claims 31 and 40, the same distinctions between claim 8 and the references apply to claims 31 and 40 as well. Therefore, the Examiner cannot state a *prima facie* obviousness rejection against claims 4-7, 22, 23, 25, 27, 33-36, and 41-45 at least by virtue of their dependency on claims 8, 31, and 40. Additionally, claims 4-7, 22, 23, 25, 27, 33-35, and 41-44 claim additional combinations of features not taught or suggested by the references.

For example, the cited references fails to teach or suggest the features wherein the porous pad has a claimed percentage of interconnecting cells, as recited in claims 7, 22, 23, and 40. The Examiner states as follows with respect to claims 7 and 23:

With respect to claims 7,23: The foam of Cope is a polyether reticulated foam having a void volume of more than 90%, which is interpreted herein as meaning that the foam has at least 90% interconnecting cells, which overlaps the claimed range of at least 95% interconnecting cells. The motivation to combine the teachings of McNeil and Kruger and Cope is stated *supra* with respect to claim 8. (Office Action dated January 23, 2008, page 5).

The Examiner discusses a portion of Cope that addresses "void volume." The relevant portion of Cope that addresses void volume is as follows:

A further object of the present invention is to provide an electrically conductive reticulated polyurethane foam having void volume greater than at least about 80%, and preferably more than 90%, using relatively small quantities of the agent conferring electrical conductivity in the foam forming reaction mixture. (Cope, column 3, lines 50-55).

Neither the cited portion nor any other portion of Cope teaches or suggests the feature wherein a porous pad has a certain percentage of interconnecting cells. The cited portion discloses certain percentages of void volume that may be included in the disclosed electrically conductive foam. However, the cited portion nowhere addresses cell interconnectivity, let alone that the disclosed electrically conductive foam has a certain percentage of cell interconnectivity. Thus, Cope fails to disclose the features wherein the porous pad has a claimed percentage of interconnecting cells, as recited in claims 7, 22, 23, and 40.

McNeil and Kruger fail to cure Cope's lack of disclose because McNeil and Kruger nowhere teach or suggest a porous pad at all. Thus, McNeil, Kruger, and Cope, alone or in combination, fail to teach or suggest all of the features of claims 7, 22, 23, and 40.

New Claims 41-44

Applicants have added new claims 41-44. No anticipation or *prima facie* obviousness rejection may be stated against new claims 41-44 at least by virtue of their dependency on claim 8. Additionally, new claims 41-44 claim additional features and combinations of features not taught or suggest by the cited references.

CONCLUSION

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 19-3140.

In light of all the foregoing, believing that all things raised in the Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections and objections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 214.259.0907.

Respectfully submitted,



Robert C. Hilton
Reg. No.: 47,649

Date: 4/22/08

For Applicants:
Kinetic Concepts, Inc.
Legal Department – Intellectual Property
P.O. Box 659508
San Antonio, Texas 78265-9508
Telephone: 210.255.6855
Facsimile: 210.255.6969

14701549IV-1